

310 CMR 7.51 Hearings Relative to Orders and Approvals

Subsection 7.51(1) is hereby deleted and replaced by the following:

(1) Rules to Intervene in an Adjudicatory Proceeding and to Request an Adjudicatory Hearing

- (a) Definitions: Unless otherwise indicated, the definitions in 310 CMR 7.00 apply to 310 CMR 7.51(1). Where a term is defined in 310 CMR 7.00 and 310 CMR 7.51(1), the definition in 310 CMR 7.51(1) controls for purposes of 310 CMR 7.51(1).

Adjudicatory Hearing or Hearing means the portion of the adjudicatory proceeding initiated by filing a notice of claim with the Office of Administrative Appeals pursuant to 310 CMR 1.01, where parties may present evidence on issues of fact and argument on issues of law, and which is concluded by the Commissioner's issuance of a final decision pursuant to 310 CMR 1.01(14).

Adjudicatory Proceeding means a proceeding before the Department in which the legal rights, duties or privileges of specifically named persons are required, by constitutional right, by provisions of M.G.L. c. 30A, or by any other provision of the General Laws or Department regulations, to be determined after opportunity for a Department hearing, but does not include the types of proceedings described in M.G.L. c. 30A § 1(1)(a) through (f). This proceeding may culminate in an adjudicatory hearing and the Commissioner's issuance of a final decision pursuant to 310 CMR 1.01(14).

Aggrieved Person means any person who, because of an act or failure to act by the Department, may suffer an injury in fact that is different either in kind or magnitude from that suffered by the general public, and that is within the scope of the interests protected by 310 CMR 7.00.

Applicant means the person named in the application as the owner or operator of the proposed facility or emission units.

Application means any request by a person for a permit, a plan approval, an emission control plan, a restricted emission status, an operating permit, an emission reduction credit or other approval issued by the Department pursuant to 310 CMR 7.00.

Approve or Approval means the approval or approval with conditions of an application for a permit, a plan approval, an emission control plan, a restricted emissions status, an operating permit, an emission reduction credit or other type of approval issued by the Department pursuant to 310 CMR 7.00.

Disapprove or Disapproval means the disapproval or denial by the Department of an application for a permit, a plan approval, an emission control plan, a restricted

emissions status, an operating permit, an emission reduction credit or other type of application made to the Department pursuant to 310 CMR 7.00.

Decision means the Department's action to either approve or disapprove of an application pursuant to 310 CMR 7.00.

Group of ten persons means a group of ten or more persons who, pursuant to M.G.L. c. 30A, § 10A, may intervene collectively as a party in any adjudicatory proceeding in which damage to the environment, as defined in M.G.L. c. 214, § 7A, is or might be at issue.

Intervenors means persons substantially and specifically affected by the adjudicatory proceeding, or persons who have the constitutional or statutory right to intervene without showing that they are substantially and specifically affected.

Issuance means the date that the decision is sent to an applicant.

Person means any individual partnership, association, firm, syndicate, company, trust, corporate, department, authority, bureau, agency, political subdivision of the Commonwealth, law enforcement agency, fire fighting agency, or any other entity recognized by law as the subject of rights and duties.

(b) Exemptions.

No person may file a request to intervene pursuant to 310 CMR 7.51(1)(c) or a request for an adjudicatory hearing pursuant to 310 CMR 7.51(1)(g) for the following:

1. Administrative orders issued by the Department for violations of any provision of 310 CMR 7.00. Such requests are subject to the rules for adjudicatory hearing pursuant to 310 CMR 7.51(3).
2. Compliance monitoring and compliance certification required by the Department pursuant to 310 CMR 7.02(7)(c).
3. Consolidation of applicable requirements into a single plan approved by the Department pursuant to 310 CMR 310 CMR 7.02(12).
4. Administrative amendments to existing plan approvals approved by the Department pursuant to 310 CMR 7.02(13).
5. Compliance with the requirements in 310 CMR 7.03.
6. Department requests to perform stack testing or stack testing protocols approved by the Department pursuant to 310 CMR 7.13.
7. Department requests to comply with emissions monitoring device requirements pursuant to 310 CMR 7.14.
8. Notifications to the Department regarding demolition or renovation operations pursuant to 310 CMR 7.09 or regarding asbestos abatement activities pursuant to 310 CMR 7.15.
9. Notifications and annual in-use compliance certifications submitted to the Department pursuant to 310 CMR 7.24(6).
10. Certifications submitted to the Department pursuant to 310 CMR 7.26.
11. Tunnel Ventilation Certifications issued by the Department pursuant to 310 CMR 7.38.

12. Administrative amendments and minor modifications to Operating Permits approved by the Department pursuant to 310 CMR 7.00: Appendix C(8).
 13. Approvals or disapprovals, issued by the Department pursuant to federal law that require the appeal of the federally required portion to be filed with a federal administrative agency or in federal court.
 14. Any other notification or certification submitted to the Department or issued by the Department pursuant to a section of 310 CMR 7.00.
- (c) Intervention in an Adjudicatory Proceeding and an Adjudicatory Hearing. Any person or a group of ten persons may request to intervene in an adjudicatory proceeding or an adjudicatory hearing in accordance with the requirements in 310 CMR 1.01(7).
- (d) Comments on Approvals. When the Department provides a public hearing and/or public comment period on a proposed decision, any person may file written comments on the proposed decision during the public hearing and/or public comment period. Submitting comments during the public hearing and/or public comment period does not automatically make the person submitting comments a party to the proceeding and does not provide the person the right to request an adjudicatory hearing.
- (e) Copy of Department's Decision. Any person who wants to receive a copy of a Department decision shall submit a written request to the contact person listed in the notice of public hearing or public comment that provides his or her electronic mail address, or if he or she does not have an electronic mail address, that provides his or her mailing address.
- (f) Final Decision.
The Department's decision to issue an approval or disapproval is final either:
 1. The day after the deadline for filing a request for an adjudicatory hearing under 310 CMR 7.51(1)(i)1., or
 2. If a request for an adjudicatory hearing is timely filed under 310 CMR 7.51(1)(i), then when the Commissioner issues a Final Decision pursuant to 310 CMR 1.01(14).After the decision is final, a stay of the decision shall be governed by M.G.L. c. 30A, §14.
- (g) Right to Request an Adjudicatory Hearing. Any person listed under 310 CMR 7.51(1)(h) shall have the right to request an adjudicatory hearing of a Department decision.
- (h) Persons Who Have a Right to Request an Adjudicatory Hearing. The following persons shall have the right to request an adjudicatory hearing of a Department decision:
 1. The applicant.
 2. An aggrieved person.
 3. A Group of Ten Persons as defined under 310 CMR 7.51, who has properly intervened in the proceeding pursuant to 310 CMR 1.01(7).
- (i) Process for Requesting an Adjudicatory Hearing.

1. To request an adjudicatory hearing, a person shall file a written request for an adjudicatory hearing pursuant to 310 CMR 1.01 within twenty-one (21) days from the date of the Department's decision.
2. An adjudicatory hearing request shall meet all the requirements contained in 310 CMR 1.01. A person who requests an adjudicatory hearing shall send a copy of the notice of claim by first class mail or by electronic mail, if no mailing address is available, to the applicant and any person who has filed a motion to intervene.
3. An aggrieved person who files a request for an adjudicatory hearing shall have the burden of proof to establish his or her status as an aggrieved person as defined herein and must state with specificity in the request for adjudicatory hearing the basis of his or her grievance.
4. A group of ten persons that has properly intervened as a group pursuant to 310 CMR 1.01(7) and files a request for an adjudicatory hearing shall limit the issues raised in the request to damage to the environment and the elimination or reduction thereof, as defined under M.G.L. c. 214, § 7A. The request for an adjudicatory hearing shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each person shall file an affidavit stating the intent to be a part of the group and to be represented by its authorized representative.

(j) Limitation on Matters Raised In Request for Adjudicatory Hearing.

1. In all cases, the issues that may be raised in a request for an adjudicatory hearing are limited to the subject matter of the Department's decision.
2. Where the Department has issued a decision for a modification to an existing approval, then the matters raised in a request for an adjudicatory hearing are limited to only the matters included in the Department's decision regarding the modification.

(k) Operating Permits. Any person who participates in any public process required under 310 CMR 7.00: Appendix C(6) with respect to the Department's final decision on an operating permit issued under 310 CMR 7.00: Appendix C, and who has standing to sue with respect to the matter pursuant to federal constitutional law, may request an adjudicatory hearing pursuant to 310 CMR 1.01.